IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 283 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellants
Versus
NARESHKUMAR VADILAL BAGADIYA & 6 - Opponents

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Appearance :
MR MA PATEL, LD. APP for Appellant :
MR DK MODI for Opponents : 1 - 3,5 - 7.
MR MD MODI for Opponents : 1 - 3,5 - 7.
None for Opponent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/06/2006

ORAL JUDGMENT

1.Heard Shri. M.A. Patel, learned Addl. Public Prosecutor for the appellant and Shri. D.K. Modi, learned counsel for the respondents.

2. The appellant – State of Gujarat has preferred the present appeal under section 378 of the Code of Criminal Procedure, 1973 challenging the order of acquittal dated 30/12/1995 passed in Criminal Case No. 207 of 1990 acquitting the present respondents / original accused of the charges under section 7(1) and 16 of the Prevention of Food Adulteration Act, 1954 [herein after referred to as the 'Act' for short]. This Court granted leave and admitted the appeal on 16/8/1996. It is to be noted that the original accused no.4 expired during the trial and it has been reflected also in the order impugned. The original accused no. 1 to 5 were arraigned in their capacity as vendors, whereas accused no.6 was arraigned in his capacity as dealer and accused no.7 in his capacity as producer or manufacturer of the food stuff in question.

3. The facts in short are set out as under:-

3.1The original complainant - Food Inspector working at Bhavnagar lodged the complaint that the original accused no. 1 to 5 as vendors have sold packets of glucose biscuits of Prem-G make which were not in

conformity with the standards prescribed under the Act and therefore they have committed offence under the Act. The Food Inspector on 18/8/1989 visited Limdavala chowk in Botad taluka and purchased from the shop of M/s. Bagadiya Harichand Jhujhabhai glucose biscuits in sealed packets after introducing himself as Food Inspector and notifying them his intention to purchase the food stuff in question for having it analysed by the public analyst. The packets were taken in accordance with law and they were sealed in strict compliance with the requirements of Prevention of Food Adulteration Rules, 1955 (herein after referred to as the 'Rules' for short]. After affixing necessary seal, identification number etc. one part of the packet was sent to Public Analyst at Bhuj and remaining two parts were sent to the Local Health Authority. The Public Analyst Report revealed that the food sample was not in conformity with the standards prescribed in the law and, therefore, the same was declared to be adulterated. On receiving the Public Analyst Report the concerned Food Inspector – complainant obtained necessary permission from the competent authority and lodged complaint under the Act. The Local Health Authority also intimated the accused about their right

to have the sample further analysed/tested by the Central Food Laboratory in due compliance with Section 13 of the Act. The accused availed the opportunity of sending remaining samples to Central Food Laboratory for further analysis and even the report of the Central Food Laboratory also contained an opinion that the sample in question did not conform to the standards and therefore they were adulterated.

3.2 The trial court after in-depth analysis of the material and evidence on record came to the conclusion that the prosecution has failed in bringing home the guilt against the accused and recorded the order of acquittal against the remaining surviving accused and acquitted them vide order dated 30/12/1995. The present appeal is preferred against the said order of acquittal.

4. Shri. Patel, learned APP has vehemently submitted that the order of acquittal is erroneous and it has led to miscarriage of justice and therefore it deserves to be quashed and set aside. Shri. Patel has submitted that the depositions and material on record would indicate clearly that there was absolute compliance with the

mandatory provisions of the Act and the Rules and therefore, when there is report from the Central Food Laboratory indicating that the food article in question is not in conformity with the standards laid down, the acquittal ought not to have been passed by the trial court. Shri. Patel has submitted that the trial court ought not to have come to the conclusion that the procedure for sending the sample to the Food Laboratory was not strictly followed. Shri. Patel has heavily relied upon the deposition of Shri. Krishnakant Chanalal Shah the Clerk of Botad court in support of his submission that the procedure as laid down under law was strictly complied with. He submitted that, in view of this, the judgment of learned trial judge deserves to be quashed and set aside and the appeal deserves to be allowed, and as there is clear finding recorded by Central Food Laboratory in respect of adulteration the accused be dealt with accordingly.

5. Shri. Modi, learned counsel for the respondents has submitted that the food articles in question were glucose biscuits, admittedly sold in sealed packets. The fact that the firm sold the biscuits in sealed packets has not been disputed or questioned at any

point of time during trial. Admittedly original accused no.1 to 5 have been arraigned as vendors of the food stuff, in view of the provisions of section 19 (2) of the Act, the benefit of doubt should have been given in their favour. Similarly the accused no.6 was merely a dealer and the cash memo in respect to the effect that the food article was purchased from original manufacturer i.e. accused no.7 was produced on record. In view of this accused nos 1 to 6 are entitled to the benefit under section 19 (2)the Act when they have sold the sealed food packets in the same condition which they have received from the manufacturer in absence of any specific averment or allegation against accused no.1 to 6 during trial. Therefore the benefit as envisaged under section 19 (2) of the Act deserves to be granted to them.

6. Shri. Modi has submitted that, so far as original accused / respondent no.7 is concerned the valid point deserves to be considered is that, there was flagrant violation of mandatory provisions of Rule 4 of the PFA Rules 1955. Shir. Modi has drawn attention of this Court to the fact that in the entire deposition of said Krishnakant Chanalal Shah it can not be inferred that

the court at the relevant time while sending sample to the Central Food Laboratory did apply its seal on the container as well as on the outer cover/box. The fact remains that the outer box only contained the seal of the court whereas the container which originally contained food packets that was received from the Local Health Authority was not affixed with any court seal or signature nor was there any distinguishing number listed on the container. Shri. Patel could not controvert this fact.

7. Shri. Modi has submitted that, in view of this clear violation of provisions of Rule-4 of the Rules in sending the sample, the trial court has rightly acquitted the accused no. 7 also. Shri. Modi has relied upon the decisions of this Court in case of (1) BHAGWANDAS GURNOMAL v. THE STATE OF GUJARAT, reported in GLR XVI, 165; (2) SHIRIRAM HARICHAND GUJARAL V. STATE OF GUJARAT, reported in GLR XVII, 434; (3) LAXMICHAND BHAILAL THAKKER V. STATE OF GUJARAT, reported in GLR XXXVI (2), 1528; and (4) an unreported decision rendered in Criminal Appeal No. 760 of 1996 dated 4th & 5th July, 2005; and has submitted that Rule-4 is mandatory and it makes incumbent upon the court

concerned to apply its seal on the container and the outer cover which carries the container to the Central Food Laboratory. And, as the prosecution has failed in proving beyond doubt the procedure followed in complying with Rule-4 of the PFA Rules the order of acquittal may not be disturbed and the same deserves to be sustained.

8. The contentions raised by Shri. Modi deserves consideration and acceptance. This Court has perused the record and the proceedings and heard learned counsels at length. The fact remains that by now the law position has crystallized and it has been held time & again that non compliance and or any infirmity in the procedure in complying with Rule 4 vitiates the trial, resulting in to the acquittal. In the instant case also as it is seen from the record the container did not carry seal of the court and the seal of the court was affixed only on the outer cover which has resulted into only partial compliance with Rule-4 rendering the procedure of sending sample to the Central Food Laboratory tarnished. In view of this, the order of the learned trial court deserves to be sustained.

9. This Court is also mindful that this being the acquittal appeal the findings and reasonings of the trial court ordinarily need not be disturbed unless & until it is ex-facie established by the appellant that sustenance of judgment would result into miscarriage of justice, in absence of any plea on the part of the prosecution and the appellant. This Court is not inclined to interfere with the findings of the trial court recorded in the impugned judgment, and in the result, the appeal deserves to be dismissed; and is dismissed accordingly.

[S.R. BRAHMBHATT, J]

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